IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

WRIT PETITION No. 261 OF 2007

Sau.Sarubai Gajananrao Gedam
v.
Sou.Shobha Digambar Mundalkar & anr.

Office Notes, Office Memoranda of Coram appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders

Mr.S.A. Gordey Advocate for the Petitioner.
Mr.P.S.Patil Advocate for Res. no.2.

....

CORAM: A.B. CHAUDHARI, J.
DATED : 10th SEPTEMBER, 2007.

Heard Mr.Gordey, learned counsel for the petitioner and Mr.Patil, learned counsel for respondent no.2. Respondent no. 1 served.

2. The courts below have concurrently found that the sale-deed on the basis of which the petitioner claim ownership of the suit house, was not a registered document though registration was required as per Section 17 of the Registration Act. Mr.Gordey made the following submissions -

(i) the said document of sale-deed is as a matter of fact an acknowledgment of payment and, as such, under section 18 of the Registration Act the same is exempted

from registration, it being optional.

(ii) that the petitioner is entitled to possessory title in view of the fact that the petitioner was put in possession after the sale-deed was executed.

3. *Per contra*, Mr.Patil, learned counsel for respondent no.2 vehemently opposed the writ petition and submitted that there is a concurrent finding of fact recorded by both the courts below and this Court cannot interfere in its writ jurisdiction.

4. Having heard the learned counsel for the parties, it is seen that the courts below have concurrently found, having examined the said document of sale-deed, that the said document being valued for more than Rs.100/- was compulsorily registrable and in absence of registration, it cannot be said that any property was conveyed to the petitioner. Both the courts below have concurrently found that by the said document of sale-deed the petitioner has not become the owner of the suit property and consequently no right can be carved out in favour of the petitioner.

5. Insofar as alleged sub tenancy is concerned, the courts below have found that respondent no.2 is son of Chandrabhagabai and, as such, was not a sub-tenant. All these are recorded findings of facts which cannot be interfered with. That apart, insofar as the two contentions raised by Mr.Gordey are concerned, it is seen that these contentions were never raised in the trial Court as well as in the appellate court. Now it is too late to allow the petitioner to raise these points for the first time in the writ petition. Petition is devoid of merit and therefore dismissed. No costs.

JUDGE

/TA/